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EXAMINER

TRAN LIEN, THUY

ART UNIT

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1794

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

In view of the appeal brief filed on 3/20/08, PROSECUTION IS HEREBY REOPENED. The rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Milton I. Cano/

Supervisory Patent Examiner, Art Unit 1794

It is noted that claim 35 is a duplicate of claim 33; it is suggested applicant cancel this claim or change the dependency.

Claims 1-3, 5-9, 16-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley (4844924) in view of Phillips et al

Stanley discloses a method of preparing a bran product. The method comprises the steps of reacting the bran with lower aliphatic carboxylic acid, acid halide, ester or anhydride and bleaching the reacted bran with one or more bleaching agents. The agents used are peroxides, chlorites, peracids and ozone. Following bleaching, the bleached bran is isolated from the bleaching medium by filtration, centrifugation etc, washed and dried to form a free-flowing particulate. (see columns 1,3-4 and example 5). The pH is adjusted to an acidic level after the esterifying step and before the bleaching step. Example 5 discloses adjusting the pH to 5 before bleaching. This meets the limitation of acidifying the bran to a pH of about 4-6 prior to treating with ozone.

The teaching of Stanley is described above. Stanley does not disclose the bran is wheat bran or red wheat bran, the size of the bran is about 100 microns, the acid as in claims 16-17, the moisture content of the bran, the amount of ozone, admixing the bran with flour, forming a dry mix, forming cereal pieces, adding the bran to a grain product and forming the grain product into finished baked good.

Phillips et al disclose a process of bleaching lignocellulosic pulp using ozone. They teach the amount of ozone used in the bleaching is .2-1% ozone (see col. 5 lines 34-38)

Stanley teaches bleaching bran with ozone; during bleaching, the bran reacts with the ozone. Thus, the reference meets the step of reacting bran with ozone. Stanley does not disclose the amount. In absence of showing of criticality or unexpected result, it would have been obvious to one skilled in the art to determine the

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amount of ozone to be used following the teaching of Phillips et al which shows amount in the range which cause bleaching to occur. Applicant has not shown any unexpected result with the claimed amount; it is only a conventional amount used in known reaction as shown by Phillips et al. The properties of reducing ferulic acid and increasing vanillin are an obvious result of the reaction of bran with ozone. Thus, such properties will also be found in the Stanley product. While Stanley discloses the preferred bran is corn bran, other material including vegetable, cereal and fruit sources can be used as the starting material. Therefore, it would have been obvious to one skilled in the art to use other type of bran when desiring to bleach such bran product. Stanley discloses bran of varying particle sizes; it would have been an obvious matter of choice to pick any size. The bran product disclosed by Stanley is a dietary fiber material having improved color stability. It would have been obvious to one skilled in the art to add the bran product to any food product including dry mix, cereal, grain product, baked goods etc...when one desires to increase the fiber content of that product. Stanley discloses adding the bran to dough for bread, crackers, cookies and biscuits. If the bran can be added to the dough, it can be added to the flour which is used to make the dough. The use of whole wheat flour or regular wheat flour would have been an obvious matter of choice. It would also have been obvious to add the bran to grain product and cereal product because these food products are typical made to have a high fiber content. The addition of the bran will serve such purpose. The making of cereal pieces is well known in the art; thus, the steps of making the cereal pieces would have been readily apparent to one skilled in the art. It would also have been obvious to use grain product to

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prepare baked good because they are commonly prepared from grain product. The properties claimed are obviously found in the Stanley product because the bran is treated with ozone just as claimed. Applicant has not shown any unexpected result or criticality with the amount claimed. When the bran is added to whole wheat flour, it is obvious the pH will be the same as claimed because the same flour is used.

Claims 1-3,5-21,23-26,33-34,35-39,41,48 are rejected under 35 U.S.C. 102(e) as being anticipated by Gonzalez et al (US 6899907 B1)

Gonzalez et al disclose a bleached bran and methods of preparation. The starting material for the bleaching can be any type of wheat such as white wheat or red wheat. The bran can be any suitable particle size such as 100 microns or more. The process comprises the steps of treating the bran with about .02-.1% chelating agent for about 1-15 minutes at a temperature of about 70-90 degree c, washing and rinsing the bran, filtering the bran, blanching the bran for 3-10 minutes at 75-85 degree C, washing and rinsing the blanched bran and reacting the bran with oxidant substances such as hydrogen peroxide, ozone and/or peracetic acid. The moisture content of the bleached bran is 4-12. The treatment with ozone is with 1-2% ozone at pH 4-5. The bleached bran can be recombined with flours. The bran can be put into dry mixes, ready-to-eat cereals, refrigerated uncooked or bakeable dough, cooked cereal dough. The chelating agents used are selected from the ones listed on page 7 lines 25-29. (see columns 4-6, col. 8, columns 10-11)

The reference discloses the limitations of the above cited claimed. The claimed language does not exclude the additional steps disclosed in the patent. The reference teaches the oxidant substances includes hydrogen peroxide, ozone or peracetic acid; thus, the disclosure includes embodiment in which ozone is the only oxidant agent. Gonzalez et al teach ozone is used in amount of .1-2% at acidic pH of 4-5; thus, it is inherent the concentration and pH are used when ozone is the oxidant agent used. The properties of the reduced ferulic acid and increased vanillin are inherent in the product disclosed in the patent. The discussion by Gonzalez et al starting on line 53 through column 10 line 5 is in relation to the bran treated with alkaline hydrogen peroxide; it is not related to product treated with ozone. Gonzalez et al do disclose embodiment in which the bran is treated with ozone; thus, the properties as claimed are inherent in the Gonzalez et al product. Since the treatment with ozone is not done under reduced or increased pressure, it is inherent the process takes place at atmospheric pressure.

Upon further consideration, the 132 affidavit submitted by applicant on 7/5/07 is found to be sufficient to overcome the rejection over the WO 02/21936A1 because this reference is a publication. However, it is not sufficient to overcome a rejection over US 6899907 patent because the reference is a patent which lists the others as inventors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 5, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794
